

AMENDED IN SENATE APRIL 13, 2005

**SENATE BILL**

**No. 45**

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**Introduced by Senator Alarcon**

January 5, 2005

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An act to add Chapter 28.5 (commencing with Section 22928) to Division 8 of the Business and Professions Code, relating to transportation.

LEGISLATIVE COUNSEL'S DIGEST

SB 45, as amended, Alarcon. Intermodal marine terminals.

Existing law imposes special regulations on various business activities but does not specifically regulate detention and per diem charges imposed by intermodal terminals on intermodal equipment used by motor carriers.

This bill would prohibit an intermodal marine equipment provider or marine terminal operator from imposing per diem or detention charges, as defined, ~~or demurrage charges~~, on an intermodal motor carrier relative to transactions involving cargo shipped by intermodal transport under certain circumstances. *The bill would also prohibit an intermodal marine equipment provider from terminating, suspending, or restricting equipment interchange rights of a motor carrier for specified reasons and from charging back, deducting, or offsetting per diem charges from the motor carrier's freight bill.*

Vote: majority. Appropriation: no. Fiscal committee: no.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

SECTION 1. Chapter 28.5 (commencing with Section 22928) is added to Division 8 of the Business and Professions Code, to read:

CHAPTER 28.5. INTERMODAL MARINE TERMINALS

22928. (a) The Legislature finds and declares that unilateral termination, suspension, or restriction of equipment interchange ~~rights without prior judicial action is contrary to the public policy of the State of California.~~ *rights of an intermodal motor carrier shall not result from intermodal marine terminal actions as specified in subdivision (b).*

(b) An intermodal marine equipment provider or intermodal marine terminal operator shall not impose per diem or detention charges on an intermodal motor carrier relative to transactions involving cargo shipped by intermodal transport under any of the following circumstances:

(1) When the intermodal marine or terminal truck gate is closed.

(2) When the intermodal marine terminal decides to divert equipment without ~~proper~~ *seven days'* notification to the motor carrier.

(3) When the intermodal marine terminal is assessed a fine pursuant to Section 40720 of the Health and Safety Code.

(4) When the intermodal marine terminal equipment is out of compliance pursuant to Section 34505.9 of the Vehicle Code *or the equipment is designated as being out of service.*

~~(e) A motor carrier shall not be charged for demurrage when a~~

(5) *When a loaded container is not available for pickup when the motor carrier arrives at the intermodal marine terminal.*

(6) *When the intermodal marine terminal is too congested to accept the container and turns away the motor carrier.*

(c) *An intermodal marine equipment provider shall not take any of the following actions:*

(1) *Charge back, deduct, or offset per diem charges from a motor carrier's freight bill.*

(2) *Unilaterally terminate, suspend, or restrict the equipment interchange rights of a motor carrier that uses the dispute*

1 *resolution process contained in the uniform intermodal*  
2 *interchange agreement to contest a charge, fee, or fine, including*  
3 *a charge for maintenance and repairs imposed by the intermodal*  
4 *marine terminal.*

5 (3) *Unilaterally terminate, suspend, or restrict the equipment*  
6 *interchange rights of a motor carrier for late payment of an*  
7 *invoice from the intermodal marine terminal.*

8 (d) As used in this chapter:

9 (1) “Per diem” or “detention” means a charge imposed by an  
10 equipment provider for late returns of an empty or a loaded  
11 intermodal container and chassis.

12 (2) “Closed” means not open or available to receive  
13 equipment, or a change of location, without a seven-day advance  
14 notice by the equipment provider’s facility to the motor carrier.

15 (3) “Intermodal marine terminal” means a marine terminal  
16 location or facility that engages in discharging or receiving  
17 equipment owned, operated, or controlled by an equipment  
18 provider.